

CHAPTER 277

COURTS

HOUSE BILL 21-1309

BY REPRESENTATIVE(S) Roberts and Carver, Bennett, Bird, Bockenfeld, Jodeh, McCluskie, Snyder, Soper, Valdez D., Garnett; also SENATOR(S) Lee and Gardner, Hisey, Kirkmeyer, Priola, Rankin, Sonnenberg, Woodward.

AN ACT**CONCERNING MEASURES RELATED TO PERMITTING CONTINUING A CRIMINAL TRIAL BECAUSE OF THE COVID-19 PANDEMIC.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 18-1-405, **amend** (6) introductory portion and (6)(i); and **add** (6)(j) and (8) as follows:

18-1-405. Speedy trial - definition - repeal. (6) In computing the time within which a defendant ~~shall be~~ IS brought to trial as provided in subsection (1) of this section, the following periods of time ~~shall be~~ ARE excluded:

(i) The period of delay between the filing of a motion pursuant to section 18-1-202 (11) and any decision by the court regarding such motion, and if such decision by the court transfers the case to another county, the period of delay until the first appearance of all the parties in a court of appropriate jurisdiction in the county to which the case has been transferred, and in such event ~~the provisions of subsection (7) of this section shall apply.~~ APPLIES; AND

(j) **(I)** UPON A MOTION BY THE COURT SUA SPONTE, A PERIOD OF DELAY FOR ANY CONTINUANCE DUE TO THE BACKLOG OF JURY TRIALS DIRECTLY RESULTING FROM A RESTRICTION, PROCEDURE, OR PROTOCOL IMPLEMENTED DURING THE 2020 AND 2021 HEALTH EMERGENCY RELATED TO THE COVID-19 PANDEMIC, NOT TO EXCEED SIX MONTHS IF THE DEFENDANT IS NOT IN CUSTODY FOR THE CASE PENDING A JURY TRIAL OR NOT TO EXCEED THREE MONTHS IF THE DEFENDANT IS IN CUSTODY FOR THE CASE PENDING A JURY TRIAL. THE BACKLOG OF JURY TRIALS RESULTING FROM THE COVID-19 PANDEMIC DOES NOT INCLUDE ANY CONSISTENT AND ONGOING JURY TRIAL BACKLOG THAT EXISTED PRIOR TO MARCH 1, 2020. THE COURT MAY GRANT ONLY ONE CONTINUANCE PURSUANT TO THIS SUBSECTION **(6)(j)** IF IT MAKES THE

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

FOLLOWING SPECIFIC FINDINGS ON THE RECORD AFTER THE PROSECUTION AND DEFENDANT HAVE HAD THE OPPORTUNITY TO BE HEARD:

(A) THE CASE IS A PART OF A COURT BACKLOG OF JURY TRIALS DIRECTLY RESULTING FROM A RESTRICTION, PROCEDURE, OR PROTOCOL IMPLEMENTED DURING THE 2020 AND 2021 HEALTH EMERGENCY RELATED TO THE COVID-19 PANDEMIC, AND THE COURT HAS DETERMINED, BASED ON AVAILABLE EVIDENCE, THAT A CONTINUANCE IS NOT ATTRIBUTABLE TO ANY CONSISTENT AND ONGOING JURY TRIAL BACKLOG THAT EXISTED PRIOR TO MARCH 1, 2020;

(B) NO COURT IN THE COUNTY WITH JURISDICTION TO TRY THE CASE IS AVAILABLE, AND THE COURT HAS EXHAUSTED ALL REASONABLE MEANS TO BRING THE CASE TO TRIAL;

(C) THE COURT HAS NOT PREVIOUSLY GRANTED A CONTINUANCE PURSUANT TO THIS SUBSECTION (6)(j); AND

(D) GRANTING THE CONTINUANCE SERVES THE INTEREST OF JUSTICE. WHEN DETERMINING WHETHER THE CONTINUANCE SERVES THE INTEREST OF JUSTICE, THE COURT SHALL MAKE SPECIFIC FINDINGS REGARDING THE IMPACT OF A CONTINUANCE ON THE PROSECUTION AND THE DEFENDANT.

(II) IN CONSIDERING WHETHER TO GRANT A CONTINUANCE PURSUANT TO THIS SUBSECTION (6)(j), THE COURT SHALL PRIORITIZE CASES TO PROCEED TO TRIAL THAT:

(A) WERE DECLARED A MISTRIAL PURSUANT TO RULE 24 (c)(4) OF THE COLORADO RULES OF CRIMINAL PROCEDURE;

(B) THE DEFENDANT IS IN CUSTODY IN THE CASE AND DOES NOT WAIVE SPEEDY TRIAL; OR

(C) INCLUDE A CHARGE OF A CRIME LISTED IN SECTION 24-4.1-302 (1) TO ENSURE A VICTIM'S RIGHT TO A SWIFT AND FAIR RESOLUTION OF THE CASE PURSUANT TO SECTION 24-4.1-302.5 (1)(o).

(III) PRIOR TO GRANTING A CONTINUANCE PURSUANT TO THIS SUBSECTION (6)(j), THE COURT SHALL INFORM THE PROSECUTING ATTORNEY, AND THE PROSECUTING ATTORNEY SHALL NOTIFY AND RECEIVE INPUT FROM THE VICTIM, AS DEFINED IN SECTION 24-4.1-302 (5), TO GIVE TO THE COURT BEFORE THE COURT MAKES A FINAL DETERMINATION CONCERNING A CONTINUANCE. A VICTIM HAS THE RIGHT TO BE HEARD AT A COURT PROCEEDING CONCERNING A CONTINUANCE PURSUANT TO THIS SUBSECTION (6)(j).

(IV) IF A COURT GRANTS A CONTINUANCE PURSUANT TO THIS SUBSECTION (6)(j) AND THE DEFENDANT IS IN CUSTODY FOR THE CASE PENDING A JURY TRIAL BECAUSE THE DEFENDANT IS UNABLE TO SATISFY THE MONETARY CONDITIONS OF BOND FOR RELEASE DESPITE BEING ELIGIBLE FOR RELEASE, THE COURT SHALL RECONSIDER THE MONETARY CONDITIONS OF BOND FOR RELEASE PURSUANT TO SECTION 16-4-107.5.

(V) A COURT SHALL NOT GRANT A CONTINUANCE PURSUANT TO THIS SUBSECTION (6)(j) ON OR AFTER 5:01 P.M. ON APRIL 29, 2022.

(VI) THIS SUBSECTION (6)(j) IS REPEALED, EFFECTIVE JULY 1, 2023.

(8) (a) THE JUDICIAL DEPARTMENT SHALL COLLECT THE FOLLOWING DATA FOR EACH CONTINUANCE GRANTED PURSUANT TO SUBSECTION (6)(j) OF THIS SECTION:

(I) THE JUDICIAL DISTRICT WHERE THE CONTINUANCE WAS GRANTED; AND

(II) THE HIGHEST CLASS OFFENSE CHARGED IN THE DEFENDANT'S CASE THAT WAS CONTINUED.

(b) THE JUDICIAL DEPARTMENT SHALL REPORT ON THE DATA COLLECTED PURSUANT TO SUBSECTION (8)(a) OF THIS SECTION AT THE JOINT HEARINGS CONDUCTED IN 2022 AND 2023 PURSUANT TO THE "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT (SMART) GOVERNMENT ACT", PART 2 OF ARTICLE 7 OF TITLE 2.

(c) ON OR BEFORE JANUARY 31, 2022, THE JUDICIAL DEPARTMENT SHALL PUBLISH THE DATA COLLECTED PURSUANT TO SUBSECTION (8)(a) OF THIS SECTION FOR THE PERIOD ON AND BEFORE DECEMBER 31, 2021. ON OR BEFORE MAY 31, 2022, THE JUDICIAL DEPARTMENT SHALL PUBLISH THE DATA COLLECTED PURSUANT TO SUBSECTION (8)(a) OF THIS SECTION FOR THE PERIOD ON AND BEFORE APRIL 29, 2022.

(d) THIS SUBSECTION (8) IS REPEALED, EFFECTIVE JULY 1, 2023.

SECTION 2. In Colorado Revised Statutes, **add** 16-4-107.5 as follows:

16-4-107.5. Hearing after excluding time for speedy trial for public health emergency - repeal. (1) IF A COURT GRANTS A CONTINUANCE PURSUANT TO SECTION 18-1-405 (6)(j) FOR A CASE THAT DOES NOT INCLUDE A CHARGE OF A CLASS 1, 2, OR 3 FELONY, AND THE DEFENDANT IS IN CUSTODY FOR THE CASE PENDING A JURY TRIAL BECAUSE THE DEFENDANT IS UNABLE TO SATISFY THE MONETARY CONDITIONS OF BOND FOR RELEASE DESPITE BEING ELIGIBLE FOR RELEASE, THE COURT SHALL ORDER THE IMMEDIATE RELEASE OF THE DEFENDANT FROM CUSTODY UPON A PERSONAL RECOGNIZANCE BOND WITHOUT MONETARY CONDITIONS.

(2) IF A COURT GRANTS A CONTINUANCE PURSUANT TO SECTION 18-1-405 (6)(j) FOR A CASE THAT INCLUDES A CHARGE OF A CLASS 1, 2, OR 3 FELONY, AND THE DEFENDANT IS IN CUSTODY BECAUSE THE DEFENDANT IS UNABLE TO SATISFY THE MONETARY CONDITIONS OF BOND FOR RELEASE DESPITE BEING ELIGIBLE FOR RELEASE, THE COURT SHALL CONDUCT A HEARING AS SOON AS PRACTICABLE, BUT NOT LONGER THAN SEVEN DAYS AFTER THE COURT GRANTED THE CONTINUANCE PURSUANT TO SECTION 18-1-405 (6)(j), FOR RECONSIDERATION OF THE DEFENDANT'S MONETARY CONDITIONS OF BOND FOR RELEASE. THE COURT SHALL REVOKE THE MONETARY CONDITIONS OF BOND FOR RELEASE ALLOWING THE DEFENDANT TO BE RELEASED, UNLESS THE COURT CONCLUDES THAT THE DEFENDANT THREATENS THE SAFETY OF ANY OTHER PERSON OR PERSONS IN THE COMMUNITY, WHETHER KNOWN OR UNKNOWN, AND THAT MONETARY CONDITIONS OF BOND FOR RELEASE ARE NECESSARY TO REASONABLY PROTECT AGAINST SUCH RISK. THE COURT MAY MODIFY THE MONETARY CONDITIONS OF BOND TO ALLOW THE DEFENDANT TO BE RELEASED IF THE COURT CONCLUDES THAT THE DEFENDANT THREATENS THE SAFETY OF ANY

OTHER PERSON OR PERSONS IN THE COMMUNITY, WHETHER KNOWN OR UNKNOWN, AND THAT MONETARY CONDITIONS OF BOND FOR RELEASE ARE NECESSARY TO REASONABLY PROTECT AGAINST SUCH RISK. FAILURE TO COMPLY WITH THIS SUBSECTION (2) REQUIRES THE COURT TO ORDER THE IMMEDIATE RELEASE OF THE DEFENDANT FROM CUSTODY UPON A PERSONAL RECOGNIZANCE BOND WITH APPROPRIATE CONDITIONS OF RELEASE.

(3) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2023.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: June 21, 2021